

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOSHUA J. BELOW, by his Guardian, DEBRA
BELOW, CHARLIE ELIZABETH BELOW and
PATRICK JOSHUA BELOW,

Plaintiffs,

ORDER

15-cv-529-wmc

and

DEAN HEALTH PLAN, INC.,

Involuntary Plaintiff,

and

STAR BLUE BELOW-KOPF, by her Guardian
ad Litem, TERESA K. KOBELT,

Intervening Plaintiff,

v.

YOKOHAMA TIRE CORPORATION, *et al.*,

Defendants.

A telephonic conference was held yesterday to address an issue reserved in the court's summary judgment opinion: the timeliness of plaintiffs' possible, affirmative claim that Yokohama should have warned on each new tire sticker that the subject tire would not fit on most original equipment wheels for light duty trucks. (Dkt. #198 at 10-11.) During the conference, plaintiffs explained that they are *not* asserting an affirmative, inadequate warning claim based on this theory, but rather as rebuttal to defendants'

affirmative defense that installation of the tire on the wrong sized wheel rim caused the tire to fail. Accordingly, defendants' motion for partial summary judgment (dkt. #53) is now GRANTED in its entirety. In light of plaintiffs' explanation, defendants' motion for leave to file their brief regarding the warning preservation issue (dkt. #204) is rendered MOOT. For the same reason, the portion of defendants' motion *in limine* seeking the exclusion of Gary Derian's opinions in support of a defective or negligent warnings claim (dkt. #69) is MOOT. Derian's opinions, if any, about the need for a change in the warnings of the subject tire sticker are also excluded as outside the scope of his Rule 26 expert report or supplemental report, but plaintiffs are not precluded from cross-examining on this subject should defendants maintain their affirmative defense of improper installation at trial. Finally, the final pretrial conference will now proceed on Tuesday, February 28, 2017, at 9:00 a.m.

Entered this 22nd day of February, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge